V Kalanathan a/l Veeran v Ketua Pengarah Jabatan Pendaftaran Negara (JPN) & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-31NCVC-3103–09 OF 2024
SU TIANG JOO J
4 AUGUST 2025

Civil Procedure — Discovery — Application for — Applicant applied for discovery of details of family tree of deceased co-proprietor against National Registration Department — Whether information sought was document — Whether information sought was confidential and official secret — Whether there was lack of prior application — Whether details of family tree could only be utilised for internal investigations of court and not for personal dealings — Whether information sought inadmissible as evidence — Whether application was fishing expedition — Whether information necessary — Whether application abuse of process — Whether there was alternative mode to obtain information — Whether production of documents and/or information would prejudice respondents — Births and Deaths Registration Act 1957 ss 6(1) & 31

The applicant had a half undivided share in a piece of property ('the property') where the other half share was registered under another party who had passed away ('the deceased co-proprietor'). A search conducted by the applicant showed that despite more than four years after her death, no application had been made to obtain letters of administration ('LOA') to administer the estate of the deceased co-proprietor. The applicant asserted that he was the nephew of the deceased co-proprietor. However, he had no knowledge as to who the beneficiaries of the deceased co-proprietor. Thus, the applicant applied by way of an ex parte originating summons for an order that he be appointed as the administrator of the estate of the deceased co-proprietor and be given the LOA of the deceased to administer her half undivided share in the property. However, the applicant had not satisfied the court that there were no other lawful beneficiaries to the estate of the deceased and that he was the beneficiary who was entitled to a grant of LOA under s 30 of the Probate and Administration Act 1959. The applicant hence made an application for discovery against the National Registration Department ('JPN') of the details of the family tree of the deceased co-proprietor pursuant to O 24 r 7A of the Rules of Court 2012 ('the ROC'). The respondents raised the following objections: (a) O 24 r 7A of the ROC was restricted to the discovery of documents and not information; (b) the information sought was confidential and was an official secret; (c) no prior application had been received by the JPN; (d) the letter from the applicant seeking the information sought did not carry any acknowledgment stamp or proof of receipt by the JPN; (e) in accord

with Circular JPN Bil No 15/2020 ('the Circular') the details of the family tree could only be utilised for internal investigations of the court and not for personal dealings by a litigant in any proceedings in court; (f) the details were not admissible as evidence given by JPN was only information found in JPN's computer system and were not conclusive; (g) the application was not specific and was a fishing expedition; (h) the documents and/or information were not necessary because they would not dispose of the action as they would not determine who were the beneficiaries of the deceased; (i) there was an alternative mode to obtain the information of the beneficiaries that was by conducting a search on births, deaths and marriages, at the JPN's counter; and (j) the application was an abuse of process and production of the documents and/or information would prejudice the respondents if any dispute arose from such production.

Held:

(1) The information registered with the respondents was a document for purposes of discovery under O 24 r 7A(1) and (2) of the ROC because under O 1 r 4(1) of the ROC 'document' was expressed to mean anything in which information of any description was recorded. The information of the family tree of the deceased co-proprietor including the names and addresses of the children of the deceased co-proprietor and recorded in the registers maintained by the JPN would be a document pursuant to the provisions of O 24 r 7A(1) and (2) of the ROC (see paras 39 & 41).

(2) The information sought was not an official secret because the information sought did not come within the definition of 'official secret' as prescribed under the Official Secrets Act 1972 ('the OSA'). Further, no certificate was produced by the respondents pursuant to s 16A of the OSA certifying that the document, information or material sought was an official secret (see para 43).

(3) The alleged lack of a prior application by the respondents was wholly without merit as there was no such requirement for an application made under O 24 r 7A of the ROC and the applicant had in fact requested for information via the letter. In response to the respondent's assertion that the JPN had not received the letter, the applicant averred in his affidavit that he had in fact attended at the JPN to effect service of the letter, but some misinformed or misguided official had even refused to acknowledge receipt driving a reasonable person to infer that it was calculated to avoid accountability (see paras 44–45 & 47).

(4) A harmonious interpretation of both ss 6(1) and 31 the Births and Deaths Registration Act 1957 ('the Act') was that whilst JPN's registers and indices shall not be open to inspection by the public, any person may apply in the prescribed form to have a search made in the indices or in the register upon payment of the fee prescribed and to have the result of such

search certified in the prescribed form. The Circular relied by the respondents sought to regulate the procedure for the release of information of family trees to public officers from investigation and enforcement agencies. Since the applicant was not a public officer from an investigation or enforcement agency, the Circular was irrelevant. The rights contained in the clear and plain provisions of ss 6(1) and 31 of the Act could not be restricted by the Circular, even if at all it was applicable, it did not apply to a member of the public (see paras 53, 56 & 58–59).

(5) The information sought did not require the respondents to carry out any further investigations, and the assessment of its admissibility and relevance fell squarely on the court and not the respondents or any government agency in this proceeding. It was not for the respondents to dictate how the information to be supplied to the court was to be utilised (see paras 63–64).

(6) The name, identity card number and death certificate of the deceased co-proprietor had been provided. The JPN ought to have such information from the registers of which it was the custodian and which had to be provided under s 31 of the Act. For the respondents to assert that it was a fishing expedition was without merit and such a challenge was rejected (see para 66).

(7) The information sought would be necessary to ascertain who would be entitled to the deceased co-proprietor's half undivided share in the property and who would be entitled to administer her estate. The discovery applied for was, therefore, necessary for disposing fairly of the proceedings. Wherefore, this application was not an abuse of process (see para 69).

(8) The JPN's assertion that the applicant had an alternative mode of discovery by doing so at its counter was illogical. Only after the information sought in this application was provided would the applicant be in a position to do a search on the relevant persons (see para 70).

(9) The JPN's alleged fear of being embroiled in dispute over the accuracy of the information was misplaced. It had a statutory duty to collate indices and maintain registers. If it had carried out its task carefully and maintained its indices and registers well, it ought not to be overly concerned as to the accuracy of information which were supplied by third parties. Therefore, an order for details of the family tree of the deceased co-proprietor was ordered to be given by the respondents to the applicant (see paras 72 & 74).

[Bahasa Malaysia summary

Pemohon memiliki separuh bahagian yang tidak dibahagikan dalam sebidang hartanah ('hartanah') di mana separuh bahagian lagi didaftarkan atas nama

pihak lain yang telah meninggal dunia ('pemilik bersama si mati'). Carian yang dilakukan oleh pemohon menunjukkan bahawa walaupun sudah lebih empat tahun selepas kematiannya, tidak ada permohonan untuk mendapatkan surat kuasa mentadbir ('LOA') bagi mentadbir harta pusaka pemilik bersama si mati. Pemohon mendakwa bahawa dia adalah anak saudara kepada pemilik bersama si mati. Walau bagaimanapun, dia tidak mempunyai pengetahuan mengenai siapa benefisiari bagi pemilik bersama si mati. Oleh itu, pemohon memfailkan permohonan melalui saman pemula ex parte untuk mendapatkan perintah supaya dia dilantik sebagai pentadbir harta pusaka pemilik bersama si mati dan diberikan LOA bagi mentadbir separuh bahagian yang tidak dibahagikan dalam hartanah tersebut. Walau bagaimanapun, pemohon tidak berjaya membuktikan kepada mahkamah bahawa tiada benefisiari lain ke atas harta pusaka pemilik bersama si mati dan bahawa dia adalah benefisiari yang berhak mendapat mendapat LOA di bawah s 30 Akta Probet dan Pentadbiran 1959. Pemohon seterusnya membuat permohonan untuk pendedahan maklumat terhadap Jabatan Pendaftaran Negara ('JPN') mengenai butiran salasilah keluarga pemilik bersama si mati mengikut A 24 k 7A Kaedah-Kaedah Mahkamah 2012 ('KKM'). Responden membangkitkan bantahan berikut: (a) A 24 k 7A KKM adalah terhad kepada pendedahan dokumen dan bukan maklumat; (b) maklumat yang dipohon adalah sulit dan merupakan rahsia rasmi; (c) tiada permohonan awal diterima oleh JPN; (d) surat daripada pemohon yang memohon maklumat tersebut tidak mengandungi cop pengakuan atau bukti penerimaan oleh JPN; (e) selaras dengan Surat Pekeliling JPN Bil 15/2020 ('Surat Pekeliling') butiran salasilah keluarga hanya boleh digunakan untuk penyiasatan dalaman mahkamah dan bukan untuk urusan peribadi oleh litigan dalam prosiding mahkamah; (f) maklumat tersebut tidak boleh diterima sebagai keterangan kerana maklumat yang diberikan oleh JPN hanyalah maklumat yang ditemui dalam sistem komputer JPN dan tidak bersifat konklusif; (g) permohonan tersebut tidak spesifik dan adalah satu 'fishing expedition'; (h) dokumen dan/atau maklumat tersebut adalah tidak diperlukan kerana ia tidak akan menyelesaikan tindakan kerana ia tidak akan menentukan siapa benefisiari si mati; (i) terdapat cara alternatif untuk mendapatkan maklumat benefisiari iaitu melalui carian kelahiran, kematian, dan perkahwinan di kaunter JPN; dan (j) permohonan tersebut merupakan penyalahgunaan proses dan pengeluaran dokumen dan/atau maklumat akan memprejudiskan responden jika berlaku sebarang pertikaian akibat pengeluaran tersebut.

Diputuskan:

(1) Maklumat yang didaftarkan dengan responden adalah dokumen bagi tujuan pendedahan di bawah A 24 k 7A(1) dan (2) KKM kerana di bawah A 1 k 4(1) KKM, 'dokumen' diertikan sebagai apa-apa jua yang maklumat mengenai apa-apa perihalan direkodkan. Maklumat tentang salasilah keluarga pemilik bersama si mati termasuk nama dan alamat

anak-anak pemilik bersama si mati dan direkodkan dalam daftar yang diselenggara oleh JPN akan dianggap sebagai dokumen mengikut peruntukan A 24 k 7A(1) dan (2) KKM (lihat perenggan 39 & 41).

(2) Maklumat yang dipohon bukanlah rahsia rasmi kerana maklumat yang dipohon tidak termasuk dalam definisi 'rahsia rasmi' seperti yang ditetapkan di bawah Akta Rahsia Rasmi 1972 ('ARR'). Tambahan pula, tiada sijil yang dikemukakan oleh responden mengikut s 16A ARR yang mengesahkan bahawa dokumen, maklumat atau bahan yang dipohon adalah rahsia rasmi (lihat perenggan 43).

(3) Dakwaan ketiadaan permohonan awal oleh responden adalah sama sekali tidak berasas kerana tiada keperluan untuk permohonan seperti itu dibuat berdasarkan A 24 k 7A KKM dan pemohon sendiri memang telah memohon maklumat melalui surat tersebut. Sebagai maklum balas terhadap tuntutan responden bahawa JPN tidak menerima surat tersebut, pemohon menyatakan dalam afidavitnya bahawa dia telah hadir di JPN untuk menyerahkan surat tersebut, tetapi seorang pegawai yang salah maklumat atau tersilap telah menolak untuk mengakui penerimaan, menyebabkan seorang yang berpengetahuan rasional mengagak bahawa tindakan tersebut adalah untuk mengelakkan akauntabiliti (lihat perenggan 44–45 & 47).

(4) Tafsiran yang harmoni terhadap kedua-dua ss 6(1) dan 31 Akta Pendaftaran Kelahiran dan Kematian 1957 ('Akta') adalah bahawa walaupun daftar dan indeks JPN tidak terbuka untuk pemeriksaan awam, mana-mana individu boleh memohon secara mengikut borang yang ditetapkan untuk membuat carian dalam indeks atau daftar tersebut selepas membayar yuran yang ditetapkan dan untuk mendapatkan surat pengesahan hasil carian tersebut dalam borang yang ditetapkan. Surat pekeliling yang dirujuk oleh responden bertujuan mengatur prosedur untuk melepaskan maklumat salasilah keluarga kepada pegawai awam dari badan penyiasatan dan penguatkuasaan. Oleh kerana pemohon bukan pegawai awam dari badan penyiasatan atau penguatkuasaan, surat pekeliling tersebut tidak relevan. Hak yang terkandung dalam peruntukan yang jelas dan terang dalam ss 6(1) dan 31 Akta tidak boleh dihadkan oleh surat pekeliling tersebut, malah jika ia terpakai, ia tidak terpakai kepada orang awam (lihat perenggan 53, 56 & 58–59).

(5) Maklumat yang dipohon tidak memerlukan responden menjalankan sebarang penyiasatan lanjut, dan penilaian terhadap kebolehterimaan dan relevansi maklumat tersebut terletak sepenuhnya dengan mahkamah dan bukan dengan responden atau mana-mana agensi kerajaan dalam prosiding ini. Bukan tugas responden untuk menentukan bagaimana maklumat yang diberikan kepada mahkamah digunakan (lihat perenggan 63–64).

(6) Nama, nombor kad pengenalan, dan sijil kematian pemilik bersama si mati telah disediakan. JPN sepatutnya mempunyai maklumat tersebut daripada daftar yang menjadi penjaganya dan yang mesti disediakan mengikut s 31 Akta. Untuk responden mendakwa bahawa ia sebuah 'fishing expedition' adalah tidak berasas dan cabaran tersebut ditolak (lihat perenggan 66).

(7) Maklumat yang dipohon adalah penting untuk menentukan siapa yang berhak ke atas separuh bahagian yang tidak dibahagikan pemilik bersama si mati dan siapa yang akan berhak mentadbit harta pusakanya. Justeru, permohonan pendedahan yang dimohon adalah perlu bagi menyelesaikan prosiding secara adil. Oleh itu, permohonan ini bukan satu penyalahgunaan proses (lihat perenggan 69).

(8) Dakwaan pihak JPN bahawa pemohon mempunyai cara alternatif untuk mendapatkan maklumat dengan melakukannya di kaunter adalah tidak logik. Hanya selepas maklumat yang dipohon dalam permohonan ini diberikan, barulah pemohon boleh menjalankan carian ke atas individu yang berkaitan (lihat perenggan 70).

(9) Kebimbangan yang didakwa oleh JPN bahawa mereka akan terjerumus dalam pertikaian tentang ketepatan maklumat adalah tidak wajar. JPN mempunyai tugas statutori untuk menyusun indeks dan menyelenggara daftar. Jika mereka melaksanakan tugas dengan teliti dan menyelenggara indeks dan daftar dengan baik, mereka tidak perlu terlalu bimbang tentang ketepatan maklumat yang disediakan oleh pihak ketiga. Oleh itu, perintah untuk maklumat salasilah keluarga pemilik bersama si mati diperintahkan untuk diberikan oleh responden kepada pemohon (lihat perenggan 72 & 74).]

Cases referred to

Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd [1986] 1 MLJ 382; [1986] 1 CLJ 2; [1986] CLJ Rep 45, SC (refd)

Ambros a/l Francis George & Anor v Ketua Pengarah Pendaftaran Negara & Ors [2023] MLJU 2457; [2023] AMEJ 2216, HC (refd)

Asian Kitchen (M) Sdn Bhd v Menara Kuala Lumpur Sdn Bhd [2025] MLJU 350; [2025] CLJU 318, HC (refd)

BA Rao & Ors v Sapuran Kaur & Anor [1978] 2 MLJ 146; [1978] CLJU 14; [1978] 1 LNS 14, FC (refd)

Bandar Utama Development Sdn Bhd & Anor v Bandar Utama 1 Jmb [2018] MLJU 697; [2019] 10 CLJ 516, CA (refd)

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 4 MLJ 236; [2021] 6 CLJ 471, FC (refd)

HAY v HER [2024] MLJU 2168; [2024] 10 CLJ 593, HC (distd)

Irene Wong Sook Lin & Ors v Datuk Au Yee Boon & Ors [2025] 9 MLJ 436; [2025] 3 CLJ 59, HC (refd)

JJ Power Groups Enterprise & Ors v Public Prosecutor [2025] 5 MLJ 197; [2025] 7 CLJ 378, FC (refd)

Koh Keng Joo & Anor v Tan Sri Dato' Seri Khalid bin Abu Bakar & Ors [2025] 9 MLJ 69; [2025] 1 CLJ 438, HC (refd)

Malaysia Debt Ventures Berhad v Platinum Techsolve Sdn Bhd & Ors [2020] MLJU 1421; [2020] CLJU 1252, CA (refd)

N2N Connect Bhd & Ors v Chua Tiong Hoong & Ors [2025] MLJU 847; [2025] CLJU 695, CA (refd)

Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281; [1995] 1 CLJ 609, CA (refd)

Nguang Chan aka Nguang Chan Liquor Trader & Ors v Hai-O Enterprise Bhd & Ors [2009] 5 MLJ 40, CA (refd)

Perbadanan Kemajuan Kraftangan Malaysia v DW Margaret a/p David Wilson (t/a Kreatif Kraf) [2010] 2 MLJ 713; [2010] 5 CLJ 899, FC (refd)

Soh Siew Lan v Koh Zoo Kwee & Anor [2023] MLJU 2091; [2023] CLJU 1888, CA (refd)

Tan Kah Fatt & Anor v Tan Ying [2023] 2 MLJ 583; [2023] 2 CLJ 169; [2023] 2 MLRA 525; [2023] 1 AMR 829, FC (refd)

Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721, FC (refd)

Vinvest Capital Holdings Bhd (Sebelum Ini Dikenali Sebagai Vivicom Intl Holdings Bhd) v EA Holdings Bhd & Ors [2024] MLJU 3155; [2025] AMEJ 1487, HC (distd)

Yekambaran s/o Marimuthu v Malayawata Steel Bhd [1993] MLJU 96; [1994] 2 CLJ 581, HC (refd)

Legislation referred to

Births and Deaths Registration Act 1957 ss 2, 3, 4, 6, 6(1), 7, 18, 31, 32, 36

Distribution Act 1958 s 6(1)

Evidence Act 1950 ss 3, s 76

Federal Constitution Second Schedule, Parts II, III

Interpretation Acts 1948 and 1967 s 133

Intestate Succession Ordinance 1960 (No 1 of 1960)

Law Reform (Marriage and Divorce) Act 1976 ss 25, 45

Official Secrets Act 1972 ss 2, 2B, 8(1)(e), 16A, Schedule

Perbadanan Kemajuan Kraftangan Malaysia Act 1979

Probate and Administration Act 1959 ss 4(1), 30

Rules of Court 2012 O 1 r 4(1), O 1A, O 7 r 2(2), 2(3), O 18 r 12(6), O 24 rr 7A, 7A(1), (2), 8, O 38 r 13, O 62 r 7, O 92 r 4

Rules of the High Court 1980 (repealed by Rules of Court 2012) O 24 r 13(1)

Trustee Act 1949 s 39

Wills Act 1959 s 3

SP Muthu Veloo a/l Palaniveloo (with him Nurul Fadlin bt Ariffin) (SP Veloo & Co) for the plaintiff/applicant.
Kashmeera a/p Balamuralee (Federal Counsel, Attorney General's Chamber) for the defendants/respondents.

Su Tiang Joo J:

The Registrar of Births and Deaths and the Registrar of Marriages from the National Registration Department (JPN) should co-operate and facilitate the tracing of people with empathy to enable people to get on with their lives expeditiously and economically

INTRODUCTION

[1] On 1 July 2025 I had granted an order for discovery against the National Registration Department ('NRD'). Pursuant to this order, the NRD or better known as Jabatan Pendaftaran Negara ('JPN') in Malaysia, is to provide to the applicant in writing, details of the family tree of the deceased co-proprietor of a piece of property which is the subject of this action. The information from the registers of JPN maintained and stored digitally or otherwise in the records of JPN to be supplied within 14 days of the date of the order is to consist of the names, and addresses of the spouse, children, parents and siblings of the deceased co-proprietor.

[2] There is no appeal against the order for discovery. However, given the frequency in which applicants have to come to court to seek such an order citing difficulties encountered by them at JPN, I feel obliged to write these grounds to highlight the problems encountered by people who need to obtain critical information from the registers maintained by JPN to get on with their lives.

[3] It is hoped these grounds will assist to facilitate the process of future engagements by the general public with JPN without their need for having to resort to contentious, time consuming and costly legal process.

BACKGROUND LEADING TO THE APPLICATION

[4] The facts leading to the application by the applicant for discovery against JPN is simple and straightforward.

[5] The applicant has a half undivided share in a piece of property held under Pajakan Negeri 22012, Lot No 49026, Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan Kuala Lumpur ('the said property'). The other half share is registered under another party who had passed away on

8 December 2019 at Hospital Sungai Buloh, Kuala Lumpur ('the deceased co-proprietor').

[6] A search conducted by the applicant on *13 February 2024* at the Letters of Administration of Deceased Persons Division of the High Court at Kuala Lumpur ('Bahagian Surat Kuasa Mati') shows that despite *more than four years after her death*, no application has been made to obtain letters of administration to administer the estate of the deceased co-proprietor.

[7] The applicant asserts that he is a nephew of the deceased co-proprietor. However, he deposed on affidavit (encl 2) that he has no knowledge as to who are the beneficiaries of the deceased co-proprietor. He, thus applied by way of an ex parte originating summons (encl 1) for an order that he be appointed as the administrator of the estate of deceased co-proprietor and be given letters of administration of the said deceased to administer her half undivided share in the said property.

[8] When the ex parte originating summons came before me for hearing on 7 February 2025, I informed learned counsel for the applicant that from the materials presented, I am not satisfied that the applicant is a beneficiary who is entitled to a grant of letters of administration under the Probate and Administration Act 1959 (Revised 1972) (Act 97) and in particular s 30 thereof which is reproduced hereunder:

> In granting administration *the Court shall have regard to the rights of all persons interested in the estate of the deceased person* or in the proceeds of sale thereof, and, in particular, administration with the will annexed may be granted to a devisee or legatee; and in regard to land settled previously to the death of the deceased, and not by his will, administration may be granted to the trustees of the settlement; and any such administration may be limited in any way the Court thinks fit:
>
> Provided that, where the deceased died wholly intestate as to his estate, administration shall, if application is made for the purpose, be granted to someone or more of the persons interested in the residuary estate of the deceased, unless by reason of the insolvency of the estate or other special circumstances the Court thinks it expedient to grant administration to some other person.

RIGHTS OF PERSONS INTERESTED IN THE ESTATE OF THE DECEASED PERSON

[9] Persons, which includes a corporation in the case of a trust or a will, would have rights and be interested in the estate of a deceased person if they are beneficiaries under a trust, a will, the Distribution Act 1958, or the Islamic laws of inheritance.

[10] Under s 3 of the Wills Act 1959 (Revised 1988) (Act 346) save for

certain limited exceptions, every person of sound mind may devise, bequeath or dispose by his will executed in the manner required by law, all property which he owns or to which he is entitled either at law or in equity at the time of his death notwithstanding that he may have become entitled to the same subsequently to the execution of the will.

[11] Subject to the deceased co-proprietor having made a will and that her will can be found to show how she has disposed of her property, in particular her half undivided share in the said property, a starting point for any inquiry would be to approach her family members.

[12] This is because judicial notice can be taken that generally, the beneficiaries of a deceased person's estate would be members of his or her family unless the property is expressly bequeathed to non-family members under the testamentary instrument of a will or a trust.

[13] Unfortunately, in Malaysia, there is currently no statutory provision for a national register of wills.

[14] In Malaysia, the logical and primary source of information on who would have the details of the next of kin of the deceased co-proprietor in the instant case, would be the Registrar General of Births and Deaths for Malaysia (or described as the Registrar of Births and Deaths), a public officer appointed by the Yang di-Pertuan Agong (s 3 of (Act 299)) under the Births and Deaths Registration Act 1957 (Revised 1983) Act 299 (see s 3 of Act 299). This is because the Registrar of Births and Deaths *has a statutory duty to keep and maintain a sufficient number of registers* for the recording of births, deaths and presumed deaths (s 4 of Act 299).

[15] It is expressly provided that save for that of an abandoned child found without information as to place of birth, the birth of every child born in Malaysia shall be registered by the Registrar (s 7 of Act 299) and similarly, the death of every person dying in Malaysia and the cause thereof shall be registered by the Registrar (s 18 of Act 299).

[16] Thus, it is clear that the information the Registrar of Births and Deaths can provide would include the identity of any children given birth to by the deceased co-proprietor, and the particulars of the birth would include the details of her likely spouse, the father of their child or children. I say likely because, the father registered as the father of their child or children may not necessarily be her lawful spouse, but this has ceased to be of much importance in the light of the case of *Tan Kah Fatt & Anor v Tan Ying* [2023] 2 MLJ 583; [2023] 2 CLJ 169; [2023] 2 MLRA 525; [2023] 1 AMR 829 (FC) where the Federal Court held that the legitimacy of a child is not necessary for the

child to be entitled to inherit under the Distribution Act 1958 which is applicable to Peninsular Malaysia as from 1 May 1958 and Sarawak as from 12 December 1986. The Distribution Act 1958 is not applicable to Sabah. Instead, it is the Intestate Succession Ordinance 1960 (En 1/1960).

[17] Another primary source of information for non-Muslims would be the Registrar of Marriages appointed under the Law Reform (Marriage and Divorce) Act 1976 (Act 164) where after the solemnisation of a civil marriage, the particulars of the parties to the marriage are to be entered into the marriage register (s 25 of Act 164) which is under his custody and control.

[18] The particulars of the spouse, children, parents and siblings of the deceased co-proprietor would be relevant information. This is because under s 6(1) of the Distribution Act 1958 (Revised 1983) Act 300, the following persons are entitled to the following proportion of a share in the property of a deceased who die intestate ie without a will:

(a) if an intestate dies leaving a spouse and no issue and no parent or parents, the surviving spouse shall be entitled to the whole of the estate;

(b) if an intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;

(c) if an intestate dies leaving issue but no spouse-and no parent or parents, the surviving issue shall be entitled to the whole of the estate;

(d) if an intestate dies leaving no spouse and no issue but a parent or parents, the surviving parent or parents shall be entitled to the whole of the estate;

(e) if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds;

(f) if an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;

(g) if an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining one-quarter;

(h) subject to the rights of a surviving spouse or a parent or parents, as the case may be, the estate of an intestate who leaves issue shall be held on the trusts set out in section 7 for the issue;

(i) if an intestate dies leaving no spouse, issue, parent or parents, the whole of the estate of the intestate shall be held on trusts for the following persons living at the death of the intestate and in the following order and manner, namely:

Firstly, on the trusts set out in section 7 for the brothers and sisters of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then

Secondly, for the grandparents of the intestate, and if more than one survive the intestate in equal shares absolutely; but if there are no grandparents surviving, then

Thirdly, on the trusts set out in section 7 for the uncles and aunts of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then

Fourthly, for the great grandparents of the intestate and if more than one survive the intestate in equal shares absolutely; but if there are no such great grandparents surviving, then

Fifthly, on the trusts set out in section 7 for the great grand uncles and great grand aunts of the intestate in equal shares.

(j) In default of any person taking an absolute interest under the foregoing provisions the Government shall be entitled to the whole of the estate except insofar as the same consists of land.

(2) If any person so dying intestate be permitted by his personal law a plurality of wives and shall leave surviving him more wives than one, such wives shall share among them equally the share which the wife of the intestate would have been entitled to, had such intestate left one wife only surviving him.

(3) When the intestate and the intestate's husband or wife have died in circumstances rendering it uncertain which of them survived the other, this section shall, notwithstanding any rule of law to the contrary, have effect as regards the intestate as if the husband or wife had not survived the intestate.

[19] A perusal of s 6(1) of Act 300 above will show that *all the prospective beneficiaries are related by way of familial ties* and only if there is no such beneficiary then the estate goes to the Government of Malaysia.

[20] All those who are of age and who are entitled to a share in the estate would be entitled to petition for a grant of letters of administration. However, the number of persons who can be appointed as administrators and who would be trustees is limited to four (s 4(1) of Act 97 and s 39 of the Trustee Act 1949 (Revised 1978) Act 208).

INSTANT CASE

[21] Beyond a bare assertion that he is a nephew of the deceased co-proprietor, from the materials presented by the applicant in the instant case, in my considered view, the applicant has not satisfied the court that there are no other lawful beneficiaries to the estate of the deceased. In other words, he has not proved on a balance of probabilities that he is the only person who should

be entitled to be appointed as the administrator of the estate of the deceased co-proprietor. This would have been sufficient for his application (encl 1) to be struck out.

[22] However, upon being apprised as to a summary of my deliberations above, learned counsel then prevailed upon me to give him an opportunity to investigate and to produce further evidence. I granted him this indulgence because with this action continuing on foot, he could apply to court to have a subpoena issued for the attendance of the Registrar of Births and Deaths or for him to apply for discovery of the details of the family tree of the deceased proprietor pursuant to O 24 r 7A of the Rules of Court 2012.

[23] The court is aware that pursuant to O 38 r 13 of the Rules of Court 2012, the court may at any stage in a cause or matter order any person to attend and produce any document which appears necessary for the purpose of the proceedings provided that he shall not be compelled if he could not be compelled to do so.

[24] Having had the benefit over the years on the bench to see the difficulties encountered by litigants in obtaining the necessary information from JPN, I directed that a formal application for discovery would be preferable so that JPN is given an opportunity to clarify its position by way of affidavit.

APPLICATION FOR DISCOVERY (ENCL 17)

[25] In due course, the applicant made an application for discovery (encl 17) pursuant to O 24 r 7A, O 62 r 7 and/or O 92 r 4 of the Rules of Court 2012.

[26] Order 24 r 7A(1) and (2) of the Rules of Court 2012 provides as follows:

> (1) An application for an order for the discovery of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.
>
> (2) *An application after the commencement of proceedings for an order for the discovery of documents by a person who is not a party to the proceedings shall be made by a notice of application, which shall be served on that person personally and on every party to the proceedings*.

[27] Order 62 r 7 of the Rules of Court 2012 provides as follows:

> 7 Service on Minister in proceedings which are not by or against the Government (O 62 r 7*)*
>
> *Where for the purpose of or in connection with any proceedings in the High Court, not being civil proceedings by or against the Government within the meaning of Part III of*

the Government Proceedings Act 1956, any document is required by any written law or these Rules to be served on the Minister of a Government department which is an authorized department for the purposes of that Act, or on such a department or on the Attorney General, section 26 of the Government Proceedings Act 1956 and Order 73, rule 3, shall apply in relation to the service of the documents required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government.

[28] Order 92 r 4 of the Rules of Court 2012 provides as follows:

4 Inherent powers of the Court (O 92 r 4*)*

For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[29] In this application, the Director General of the National Registration Department, the Minister of Home Affairs and the Government of Malaysia were named as respondents. And, the applicant prayed for the following reliefs:

bahawa Ketua Pengarah Jabatan Pendaftaran Negara (selepas ini dirujuk sebagai 'JPN') dengan ini diarahkan untuk memberikan dan/atau membekalkan dan/atau mendedahkan ('to provide and/or disclose') kepada Pemohon secara bertulis, segala dokumen dan/atau maklumat yang berkaitan dengan Salasilah Keluarga ('Family Tree') yang lengkap serta maklumat ahli-ahli waris dan/atau benefisiari dan/atau waris kadim yang sah bagi seorang penama, Patchemal A/P Krishnan (No. K/P: 570206–10–5348/8291649), Si Mati (selepas ini dirujuk sebagai 'Si Mati') termasuk tetapi tidak terhad kepada nama penuh, nombor kad pengenalan, alamat tempat tinggal terkini serta nombor telefon individu-individu tersebut bagi tujuan tindakan Saman Pemula bertarikh 24.09.2024 (selepas ini dirujuk sebagai 'tindakan ini');

2. bahawa segala maklumat yang dinyatakan di dalam perenggan (1) diatas adalah merupakan maklumat yang terkini dan muktamad berdasarkan rekod dan/atau dokumen yang berada di dalam milikan/simpanan Ketua Pengarah JPN bagi tujuan tindakan ini;

3. kos bagi permohonan ini adalah kos di dalam kausa; dan

4. lain-lain relif dan/atau perintah selanjutnya yang difikirkan perlu dan suaimanfaat oleh Mahkamah yang Mulia ini.

[30] Besides the Government of Malaysia, and if necessary, the Minister of Home Affairs, pursuant to Act 299 the correct party to be named ought to have been the Registrar General of Births and Deaths instead of the Director General of the National Registration Department. Nevertheless, the learned federal counsel did not take issue with this. In fact, the affidavit in opposition (encl 30) to the application for discovery was filed by one Badrul Hisham bin Alias who described himself as the Ketua Pengarah Pendaftaran Negara of JPN.

[31] Order 7 r 2(2) and (3) of the Rules of Court 2012 provides that otherwise than an ex parte originating summons where the party commencing the action is to be described as the applicant, the parties are to described as plaintiff and defendant. See *Asian Kitchen (M) Sdn Bhd v Menara Kuala Lumpur Sdn Bhd* [2025] MLJU 350; [2025] CLJU 318 (HC) para 7; and *Irene Wong Sook Lin & Ors v Datuk Au Yee Boon & Ors* [2025] 9 MLJ 436; [2025] 3 CLJ 59 (HC) para 5.

[32] I observed that under O 24 r 7A(1) of the Rules of Court 2012, where an application is made before the commencement of proceedings, the person against whom the order is sought shall be made a defendant. Such a provision is absent in O 24 r 7A(2) when an application is made after the commencement of proceedings. Thus, in my considered view, nothing turns on the fact that the parties in the application (encl 17) are named as applicant and respondents. More so, when I take into account O 1A of the Rules of Court 2012, which provides that:

> in administering these Rules, the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.

OBJECTIONS TAKEN BY THE RESPONDENTS

[33] In summary, the respondents who were represented by learned federal counsel from the Attorney General's Chambers, raised the following objections and are set out below in the order in which they ought to be addressed and decided:

(a) O 24 r 7A of the Rules of Court 2012 is restricted to the discovery of documents and not information;

(b) the information sought is confidential and is an official secret as defined under s 2 of the Official Secrets Act 1972 (Act 88) and wrongful communication of the same by a person having access to it by reason of his office would expose the person to being charged for an offence under s 8(1)(e) of the Official Secrets Act 1972, and if convicted, is punishable with imprisonment for a term not less than one year but not exceeding seven years;

(c) no prior application has been received by JPN Wilayah Persekutuan Kuala Lumpur ('JPN WPKL') and thus the assertion that the applicant had done so ought to be rejected;

(d) the letter dated 25 November 2024 from the plaintiff's solicitors seeking the information sought does not carry any acknowledgment stamp or proof of receipt by the JPN WPKL;

(e) in accord with Circular JPN Bil No 15/2020 the details of the family tree

can only be utilised for internal investigations of the court and not for personal dealings by a litigant in any proceedings in court as what is being done in this case;

(f) the details are not admissible as evidence given by JPN is only information found in JPN's computer system and are not conclusive;

(g) the application is not specific and is a fishing expedition;

(h) the documents and or information are not necessary because they would not dispose of the action as they will not determine who are the beneficiaries of the deceased;

(i) there is an alternative mode to obtain the information of the beneficiaries that is by conducting a search on births, deaths and marriages, at the JPN's counter; and

(j) the application (encl 17) is an abuse of process and production of the documents and or information will prejudice the respondents if any dispute arise from such production.

COURT'S ANALYSIS AND FINDINGS

Law on discovery

[34] Both learned counsel for the applicant and learned federal counsel cited and relied upon the leading authority on discovery, namely, *Yekambaran s/o Marimuthu v Malayawata Steel Bhd* [1993] MLJU 96; [1994] 2 CLJ 581 (HC) where Edgar Joseph Jr J (later FCJ) at p 585 held as follows:

> The essential elements for an order for discovery are threefold; namely, first there must be a 'document', secondly, the document must be 'relevant' and thirdly, the document must be or have been in the 'possession, custody or power' of the party against whom the order for discovery is sought.

[35] *Yekambaran* has been cited with approval in many a Court of Appeal authority, the most recent being *N2N Connect Bhd & Ors v Chua Tiong Hoong & Ors* [2025] MLJU 847; [2025] CLJU 695 (CA) para 34.

[36] It is indisputable that besides the three elements mentioned, discovery of the document sought will be ordered only if necessary. See O 24 r 8 of the Rules of Court 2012 which is reproduced below to facilitate reading:

> 8 Discovery to be ordered only if necessary (O 24 r 8)
>
> *On the hearing of an application for an order under rule 3, 7 or 7A, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or adjourn the application and shall in any case refuse to make such an order*

if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

[37] In *Bandar Utama Development Sdn Bhd & Anor v Bandar Utama 1 Jmb* [2018] MLJU 697; [2019] 10 CLJ 516 para 18 the Court of Appeal said:

> [18] It must be noted that O 24 is 'fact centric'. Pure reliance of cases within and outside the jurisdiction as a general rule will not tie the hands of the court in the exercise of its discretionary powers. The test whether or not to grant an order is set out in O 24 r 8 itself which read as follows ... (see the para, above)

[38] The same emphasis was laid by an earlier Court of Appeal decision in the case of *Nguang Chan aka Nguang Chan Liquor Trader & Ors v Hai-O Enterprise Bhd & Ors* [2009] 5 MLJ 40 (CA) which held that under O 24 r 13(1) of the (then) Rules of the High Court 1980, an order for the production of documents for inspection shall not be granted unless the court is satisfied that such an order is necessary either for the fair disposal of the case or for the saving of costs.

Whether information sought is a document

[39] I have no hesitation in holding that the information registered with the respondents is a document for purposes of discovery under O 24 r 7A(1) and (2). This is because under O 1 r 4(1) of the Rules of Court 2012 'document' is expressed to mean *anything in which information of any description is recorded* and includes a claim, summons, application, judgment, order, affidavit, witness statement or any other document used in a court proceeding.

[40] The applicant further correctly placed reliance on the definition of 'document' under s 3 of the Evidence Act 1950 Act 56 where it provides amongst other things to mean:

> any matter expressed, described or howsoever represented upon any substance, material or thing embodied in any *disc, tape, film, sound track or other device.*

[41] Wherefore, given the very wide definition of document, the information of the family tree of the defendant including the names and addresses of the children of the deceased defendant and recorded in the registers maintained by JPN would be a document pursuant to the provisions O 24 r 7A(1) and (2) of the Rules of Court 2012.

(a) With respect, the decision handed down in *HAY v HER* [2024] MLJU 2168; [2024] 10 CLJ 593 (HC) paras 31–31 where the High Court made a distinction between documents and information and proceeded to hold that names, addresses of individuals did not constitute documents can be readily distinguished. In *HAY v HER*, the plaintiff was

seeking information simpliciter of the names and addresses of six individuals who accompanied the defendant when the defendant was exercising rights of access and who allegedly intimidated and harassed the plaintiff. In a similar vein, the case of *Vinvest Capital Holdings Bhd (Sebelum Ini Dikenali Sebagai Vivicom Intl Holdings Bhd) v EA Holdings Bhd & Ors* [2024] MLJU 3155; [2025] AMEJ 1487, (HC) paras 41–42 which followed *HAY v HER* can be readily distinguished as the discovery application was for information on 'whether such individuals are the purchasers that have purchased the Shares Belonging to plaintiff (whether directly or through pledged securities account) vide the open market on 23-06-2023 and/or the subsequent transactions vide the open/off market ...'. In *HAY v HER* and *Vinvest* the issue of whether the information sought comes within the definition of 'document' under s 3 of the Evidence Act 1950 Act 56 or O 1 r 4(1) of the Rules of Court 2012 or both were not raised or discussed.

Official secret

[42] I rejected the respondents' claim that the information sought is an official secret for the following reasons:

(a) the information sought does not come within the definition of 'official secret' as prescribed under the Official Secrets Act 1972 Act 88;

(b) in amplification, the information is not a document specified in the Schedule in Act 88 or has been classified as 'Top Secret', 'Secret', 'Confidential' or 'Restricted' as case may be by a Minister, the Menteri Besar or Chief Minister of a State or such public officer appointed under s 2B of Act 88;

(c) no certificate was produced by the respondents pursuant to s 16A of Act 88 certifying that the document, information or material sought is an official secret;

(d) this court had in *Koh Keng Joo & Anor v Tan Sri Dato' Seri Khalid bin Abu Bakar & Ors* [2025] 9 MLJ 69; [2025] 1 CLJ 438 (HC) at para 38 held that the procedural steps has to be fulfilled before a shield of secrecy can be put up with reliance placed on the case of *BA Rao & Ors v Sapuran Kaur & Anor* [1978] 2 MLJ 146; [1978] CLJU 14; [1978] 1 LNS 14 (FC), where Raja Azlan Shah FCJ (as the late HRH was) held as follows at p 151:

> *A mere assertion of confidentiality and that affairs of State are involved without evidence in support cannot, in my view, shut out the evidence sought by the respondents*. Paragraph 2 admitted that the Committee was set up by the Ministry to inquire into the death of the deceased at the Hospital Daerah Mentakab on June 1, 1973. The terms of Reference or any document relating thereto were not before the court. The affidavit went on in para 3 to broaden

A the base by asserting that the inquiry was 'to investigate into matters relating to the medical facilities and services and hospital administration existing in the Hospital Daerah Mentakab in 1973 with a view to make such comments and recommendations ... to enable my Ministry to carry out its policy of promoting greater efficiency in hospital administration and the provision of
B medical services not only in respect of the Hospital Daerah Mentakab but also in respect of all hospitals throughout the country. 'I am of opinion that this was uttered with tongue in cheek and with no other object than to suppress evidence which may or may not assist the respondents in their claim based on negligence of the appellant medical officers and the Government as
C their employer'.

Lack of a prior application

[43] I find the alleged lack of a prior application by the respondents to be
D wholly without merit for the following two reasons:

(a) unlike an application for further and better particulars of pleadings which has to be preceded with a request for the same by letter (see O 18 r 12(6) of the Rules of Court 2012), there is no such requirement for an
E application made under O 24 r 7A of the Rules of Court 2012; and

(b) I find that the applicant had in fact requested for information via letter dated 25 November 2024 for the reasons now following.

[44] In response to the respondent's assertion that JPN WPKL has not
F received the letter from the solicitors for the applicant dated 25 November 2024 seeking information on the family tree of the deceased co-proprietor, the applicant replied by way of affidavit (encl 32) to aver that:

(a) he had together with his solicitor attended at the counter of the
G Investigation and Enforcement Department ('Kaunter Bahagian Siasatan dan Penguatkuasaan') JPN WPKL to serve the letter of 25 November 2024 ('the letter of 25 November 2024'). However, the officer or clerk on duty refused to accept the said letter and refused to place an acknowledgement of receipt stamp on the duplicate copy of the
H said letter giving the reason that the applicant and his solicitor do not come within the List of Agencies in Annexure A to the JPN Circular No 15/2020 ('the JPN Circular 15/2020') who are allowed to make an application for details of a family tree;

(b) such refusal led to him not being able to produce an acknowledgment of
I receipt on the duplicate of the said letter, and such wilful conduct which is asserted to be a standard practice on the part of JPN is mala fide which should not be condoned not only by JPN but by any governmental agency as it prejudices the applicant and the beneficiaries of the deceased proprietor in the administration of the estate of the deceased; and

(c) the denial by JPN of the receipt of the said letter leads to the logical inference that it was calculated to avoid responsibility in having to reply thereto and does not reflect well on JPN.

[45] There was no reply made by the respondents to any of the aforesaid positive averments made on oath. In *Alloy Automotive Sdn Bhd v Perusahaan Ironfield Sdn Bhd* [1986] 1 MLJ 382; [1986] 1 CLJ 2; [1986] CLJ Rep 45 (SC), the Supreme Court held that the respondent's failure to contradict the appellant's (positive) assertions must be taken as an admission of the fact so asserted. This principle was adopted and made famous by the Court of Appeal in *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281; [1995] 1 CLJ 609 (CA) with the principle later becoming known as the '*Ng Hee Thoong* principle' although it has its roots in *Alloy Automotive*.

[46] In the circumstances, I accept the positive averments by the applicant that he had in fact attended at JPN WPKL to effect service of the said letter of 25 November 2024, but some misinformed or misguided official had even refused to acknowledge receipt driving a reasonable person to infer that it was calculated to avoid accountability. Such conduct is unacceptable. In *Ambros a/l Francis George & Anor v Ketua Pengarah Pendaftaran Negara & Ors* [2023] MLJU 2457; [2023] AMEJ 2216 Wan Ahmad Farid Wan Salleh J (now CJ) said the following at paras 52–53 which bears reproduction as the Registrar General of JPN was admonished in the following words:

> [52] Having said that, I find it unacceptable that the plaintiffs were left high and dry in his application for the child's citizenship under art 15A of the Federal Constitution. The letter went unheeded from the defendants except for the repeated standard answer that the 'application is being processed'. I can only echo what was said by Lord Denning MR in *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 (CA):
>
> > Good administration requires that complaints should be investigated and that grievances should be remedied ... [A Minister] should not refuse to have a complaint investigated without good reason.
>
> [53] The aforesaid proposition is reiterated by Gopal Sri Ram JCA (later FCJ) in delivering his judgment at the Court of Appeal in *Lam Eng Rubber Factory (M) Sdn Bhd v Pengarah Alam Sekitar, Negeri Kedah dan Perlis & Anor* [2005] 2 MLJ 493 (CA). His Lordship remarked as follows:
>
> > I recall at one point of time when Tun Abdul Razak our second Prime Minister introduced a system whereby *every letter received by a government department was responded to promptly by an acknowledgment card which carried a file number with the pre-printed remarks that the matter was receiving attention. This enabled the writer to have a file reference with which to follow up with his inquiry or complaint.* I cite this merely as an example of good administration in practice.

[47] Such lack of diligence, responsibility and empathy on the part of JPN WPKL is most disappointing, and it is hoped that with there being CCTV facilities and the usual attendance record of the staff on duty, an internal investigation will be carried out to ascertain who was the official who had even refused to place an acknowledgment stamp on the letter of request and that appropriate action be taken.

Legal effect of JPN Circular Bil No 15/2020

[48] In resisting the application for discovery, I observed that the learned federal counsel for the respondents did not rely on the provisions of s 6 of Act 299 and in particular s 6(1) thereof, which expressly provides that:

> (1) *Registers and indices shall not be open to inspection by the public*.
>
> (2) A public officer may, in the performance of his duties and with the authorization of the Registrar-General, inspect the registers and indices.

[49] In my considered view, the lack of reliance by learned federal counsel is understandable as the blanket prohibition in s 6(1) above has to read together with the other provisions of the Act as a whole. In particular, it has to be read in harmony with the provisions of s 31 of Act 299 which provides that:

> Subject to the provisions of section 32 *any person may apply in the prescribed form to have a search made in the indices or in the register* upon payment of the fee prescribed and to have the result of such search certified in the prescribed form.

[50] Section 32 of Act 299 provides for the issuance of certificates of birth, certificate of death or certificate of presumed death.

[51] Pursuant to the Interpretation provision housed in s 2 of Act 299, 'indices' means indices of entries in register and 'register' means *any register* required to be kept under the provisions of this Act. The plain and ordinary meaning of s 31 of Act 299 is that save for the applications for certificates of birth, death or presumed death, *any person*, which would include the applicant or his solicitor, may apply in the prescribed form upon payment of the prescribed fee to have a search made in the indices or in the register kept by the Registrar General of Births and Deaths.

[52] A harmonious interpretation of both ss 6(1) and 31 of Act 299 is that whilst JPN's registers and indices shall not be open to inspection by the public, any person may apply in the prescribed form to have a search made in the indices or in the register upon payment of the fee prescribed and to have the result of such search certified in the prescribed form. The search will be one conducted by JPN upon payment of the prescribed fee with the applicant

entitled to have the results of the search certified by JPN in the prescribed form. The statutory rule of harmonious interpretation was applied by the Federal Court in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236; [2021] 6 CLJ 471 (FC) para 203 when construing Parts II and III of the Second Schedule of the Federal Constitution, and in *Perbadanan Kemajuan Kraftangan Malaysia v DW Margaret a/p David Wilson (t/a Kreatif Kraf)* [2010] 2 MLJ 713; [2010] 5 CLJ 899 (FC) paras 14 and 23 when construing interlinked provisions of the Perbadanan Kemajuan Kraftangan Malaysia Act 1979.

[53] The court's primary duty is to give effect to the expressed intention of Parliament, and where the language of a statutory provision is clear and unambiguous, the courts must apply its plain and ordinary meaning, see *JJ Power Groups Enterprise & Ors v Public Prosecutor* [2025] 5 MLJ 197; [2025] 7 CLJ 378 (FC) para 59 and *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721 (FC) para 30.

[54] The respondents and in particular, the Registrar General of JPN deposed on affidavit that the document and or information applied for by the applicant is not necessarily conclusive or current and the applicant cannot rely wholly on it when produced to determine who are the beneficiaries for the disposal of this action (encl 30 para 7(h)). In support of this assertion, reliance was placed on a departmental Circular No 15/2020 dated 9 September 2020 under Reference No JPN DP 163/15/3(26) ('the said circular') (exh BHA1 to encl 30).

[55] A careful perusal of the said circular shows that it seeks to regulate the procedure for the release of information of family trees to public officers from investigation and enforcement agencies. The caption to the said circular is self-descriptive and is set out hereunder:

> Prosedur Baharu Pengeluaran Maklumat Salasilah Keluarga Kepada *Agensi Yang Menjalankan Tugas Penguatkuasaan* Oleh Bahagian Siasatan Dan Penguatkuasaan (BSK).

[56] Under s 133 of the Interpretation Acts 1948 and 1967 (Consolidated And Revised 1989) Act 388, 'public officers' is defined as follows:

> A reference in any written taw to any public officer by the usual or common title of his office shall, if there be such an office customarily in the Federation or any State and unless the contrary intention appears, be read and construed as referring to the person for the time being holding or carrying out the duties of that office in the Federation or State, as the case may be.

[57] Clearly, the applicant is *not a public officer* from an investigation or enforcement agency and by reason thereto, the said circular is irrelevant.

[58] The rights contained in the clear and plain provisions of ss 6(1) and 31 of Act 299 which Parliament has in its wisdom enacted cannot be restricted by the said circular, even if at all it is applicable, I find it does not apply to a member of the public.

[59] Section 45 of Act 164 provides that the Registrar General of Marriages or the Superintendent Registrar may, *on application made by any person who shall state his reason for making the application and on payment of the prescribed fee, if he is satisfied with the reason therefor*:

(a) allow the marriage register and index kept by him to be inspected;

(b) furnish the applicant with an extract of any entry in the marriage register certified under his hand and seal of office.

[60] Needless to say, the discretion of the Registrar General cannot be exercised arbitrarily but must be based upon sound reasons, failing which, his decision can be challenged.

[61] And, s 76 of the Evidence Act 1950 Act 56 provides that any person who has a right to inspect can demand for a certified true copy on payment of the legal fees therefor. The provisions are reproduced hereunder.

> Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the foot of the copy, that it is a true copy of the document or part thereof, as the case may be, and the certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorized by law to make use of a seal, and the copies so certified shall be called certified copies.
>
> Explanation — Any officer who by the ordinary course of official duty is authorized to deliver the copies shall be deemed to have the custody of the documents within the meaning of this section.

Information sought is inadmissible as evidence

[62] On the assertion by the respondents that the information sought is not admissible as evidence as it is not conclusive. In my considered view, with respect, the information sought does not require the respondents to carry out any further investigations, and the assessment of its admissibility and relevance falls squarely on the court and not the respondents or any government agency in this proceedings.

[63] With respect, it is not for the respondents to dictate how the information (to be) supplied to the court is to be utilised.

Fishing expedition

[64] In *Soh Siew Lan v Koh Zoo Kwee & Anor* [2023] MLJU 2091; [2023] CLJU 1888 (HC) para 16(iv), Justice Leong Wai Hong succinctly said:

> A 'fishing expedition' in the context of pre-action discovery refers to the aimless trawling of an unlimited sea. Where, on the other hand, the plaintiff knows a specific and identifiable spot into which he wishes to drop a line (or two), it would not be regarded as a 'fishing expedition' (*Thyssen Hunnebeck Singapore Pte Ltd v TTJ Civil Engineering Pte Ltd* [2003] 1 SLR 75 *Choo Han Teck JC and Billion Prima Sdn Bhd & Anor v Nutech Company Ltd & Anor* [2017] 10 MLJ 213; [2017] 1 CLJ 179 Wong Kian Kheong JC).

[65] The name, identity card number and death certificate of the deceased co-proprietor have been provided. JPN WPKL ought to have such information from the registers of which it is the custodian and which has to be provided under s 31 of Act 299. For the respondents to assert that it is a fishing expedition is without merit and such a challenge is rejected. In fact, the application has clearly identified the target within its cross-hairs.

Whether information is necessary and whether the application is an abuse of process

[66] In *Malaysia Debt Ventures Berhad v Platinum Techsolve Sdn Bhd & Ors* [2020] MLJU 1421; [2020] CLJU 1252 (CA) para 202, the Court of Appeal held that:

> In our view, the proper approach to the question of whether discovery is 'necessary' may be gleaned from the case of *Bayerische Hypo-und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] SGHC 155; [2004] 4 SLR (R) 39 ('Bayerische') where the High Court of Singapore at para [37] stated as follows:
>
> > The ultimate test is whether discovery is necessary for disposing fairly of the proceedings or for saving costs. An assertion that the documents are relevant will not be good enough. Equally, an assertion that the documents are necessary because they are relevant will not be enough.

[67] With respect, contrary to the assertion by learned federal counsel, the information sought would be necessary to ascertain who would be entitled to the deceased co-proprietor's half undivided share in the said property and who would be entitled to administer her estate. The identity of the beneficiaries is critical to enable the applicant to approach and if necessary, add them as a party and for all parties who are entitled to share in the said property to realise their

rights to the said property. The discovery applied for (encl 17) is, therefore, necessary for disposing fairly of the proceedings. Wherefore, this application is not an abuse of process as contended by the respondents.

[68] To deny the application will result in the applicant suffering indefinitely on how to deal with his rights to the said property. And, I agree with learned counsel for the applicant that parties in a similar situation will have a similar problem.

Alternative mode

[69] JPN's assertion that the applicant has an alternative mode of discovery by doing so at its counter is illogical. Common sense dictates that only after the information sought in this application is provided would the applicant be in a position to do a search on the relevant persons. In other words, without this information the applicant could not make a search at all.

Role of JPN

[70] At para 51 of their submissions (encl 35) which resonates well with this court, learned counsel, said:

> The Respondents, in particular, JPN — is a Government Agency charged with the duty to collate the relevant information. *That Government Agency is funded by public funds. It then follows that the Respondents should be pro-active in assisting the public in matters of this nature*, especially matters of this nature, not hide behind the shroud of secrecy. (Emphasis added.)

[71] JPN WPKL's alleged fear of being embroiled in dispute over the accuracy of the information is misplaced. It has a statutory duty to collate indices and maintain registers. It cannot shirk from its duty to allow any person to make a search as provided for under s 31 of Act 299 and s 45 of Act 164 and to provide certified true copies pursuant to s 76 of Act 56 and if it has carried out its task carefully and maintained its indices and registers well, it ought not to be overly concerned as to the accuracy of information which are supplied by third parties. In this regard, s 36 of Act 299 prescribes penalties for making or permitting false information, false entry or destruction of entry. For completeness, the provision of s 36 of Act 299 is reproduced hereunder:

> (1) Any person who —
>
> (a) wilfully makes or permits to be made for the purposes of registration any false statement;
>
> (b) wilfully or knowingly furnishes or permits to be furnished any false information, touching any of the particulars required by the Act to be made known;

(c) makes or permits to be made any false entry in any register, knowing the same to be false;

(d) wilfully destroys or permits to be destroyed any entry in any register;

(e) wilfully issues any Certificate of Birth or Certificate of Death containing false particulars;

(f) without lawful authority makes any mark on or entry upon, or erases, cancels, tampers or alters any mark or entry contained in any register;

(g) knowingly and wilfully registers or causes the registration of a birth or a death in respect of one person to be effected more than once;

(h) makes use of a Certificate of Birth or a Certificate of Death knowing or believing that it contains any false particulars;

(i) knowingly possesses or makes use of a Certificate of Birth or a Certificate of Death purporting the same to be his own or of any person other than the rightful owner's;

(j) forges a Certificate of Birth, Certificate of Death or Certificate of Presumed Death;

(k) hands over any Certificate of Birth, Certificate of Death or Certificate of Presumed Death to any person knowing or believing it will be used for unlawful purposes;

(l) without lawful authority or reasonable excuse wilfully retains any Certificate of Birth or Certificate of Death from the rightful owner;

(m) aids or abets the commission of any offence against this Act; or

(n) knowingly possesses or makes use of a fake Certificate of Birth, Certificate of Death or Certificate of Presumed Death, shall be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(2) Every offence under paragraph (1)(a), (b), (c), (h), (i), (j), (k), (m) or (n) shall be a seizable offence for the purpose of the law relating to criminal procedure.

[72] One of the reasons for JPN collecting and organising the data is to assist the public in a transparent and responsible manner, and it ought to co-operate and facilitate the tracing of people with empathy to enable people who knock at its doors for information from its registers to get on with their lives expeditiously and economically.

CONCLUSION

[73] Wherefore, this court had granted an order for details of the family tree of the deceased co-proprietor to be given by the respondents to the applicant.

A Despite the difficulties caused by the unnecessary obstacles strewn in his path by JPN, the applicant showed magnanimity by not seeking for costs against the respondent.

Order accordingly.

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Reported by Nabilah Syahida Abdullah Salleh

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